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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/563,845	01/05/2006	Daniel R. Escott	GB 030107	5429
65913	7590	09/30/2008		
NXP, B.V. NXP INTELLECTUAL PROPERTY DEPARTMENT M/S41-SJ 1109 MCKAY DRIVE SAN JOSE, CA 95131			EXAMINER SHEDRICK, CHARLES TERRELL	
			ART UNIT 2617	PAPER NUMBER
			NOTIFICATION DATE 09/30/2008	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ip.department.us@nxp.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/563,845	<b>Applicant(s)</b> ESCOTT, DANIEL R.	
	<b>Examiner</b> CHARLES SHEDRICK	<b>Art Unit</b> 2617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 101*

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims **15 and 16** are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 16 recites **a program code carrier** carrying program code which when executed on a testing computer (10) cause said computer to carry out any of the methods as claimed in claim 11.

The Examiner respectfully notes that a program code carrier reads on "a signal". Claims directed towards a signal are non statutory.

Claim 15 recites program code (**i.e., a computer program**) which when run on a testing computer (10) causes said computer to carry out any of the methods as claimed in claim 11.

The Examiner respectfully notes that computer programs are inclusive under Non- Statutory subject matter.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4, 6 and 12-23 rejected under 35 U.S.C. 102(b) as being anticipated by Rimpela WO 00/51380.

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Consider **claims 1 and 11**, Rimpela teaches a radio device testing system and method comprising: at least one radio device having a software radio stack through which radio messages (**e.g., see at least the abstract**) comprising data are processed in accordance with a predetermined radio protocol (**e.g., see at least page 7 lines 1-8**), and test control means for controlling and monitoring the testing of said at least one radio device via a link there between (**e.g., see at least figure 2 and page 10 lines 1-17**), characterized in that perturbation means linked to said stack and to said control means is provided and where, under control of said test control means, said stack perturbation means perturbs an aspect of said radio stack processing(**i.e., perturbation is performed by testing means. the test control means provides data included in messages to the perturbation means and providing response data to the test control means )** (**e.g., see at least page 14 line 10- page 15 line 15**).

Consider **claim 2**, Rimpela teaches a testing system according to claim 1, wherein said radio stack comprises a plurality of logical layers through which said radio messages are processed (**e.g., see at least page 14 line 10- page 15 line 15 and figure 3**), and wherein said perturbation means is linked to at least one of said layers in said stack (**i.e., perturbation is performed by testing means**)(**e.g., see at least page 14 line 10- page 15 line 15 and figure 3**).

Consider **claim 3**, Rimpela teaches a testing system according to claim 2, wherein said perturbation aspect of said radio stack processing comprises said perturbation means altering a layer operation to perturb said data en route through said linked layer (**i.e., perturbation is performed by testing means**)(**e.g., see at least page 14 line 10- page 15 line 15 and figure 3**).

Consider **claim 4**, Rimpela teaches a testing system according to claim 2, wherein said perturbation aspect of said radio stack processing comprises said perturbation means altering

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said data of a message en route through said layer **i.e., perturbation is performed by testing means** )(e.g., see at least page 14 line 10- page 15 line 15 and figure 3).

Consider **claim 6**, Rimpela teaches a testing system according to claim 1, further comprising radio message monitoring means for intercepting over the air radio messages and supplying said message data to said test control means via a link therebetween (**i.e., the radio uplink and downlink messages are directed towards the testing means**)(e.g., see at least **figure 2 and related description**).

Consider **claim 12**, Rimpela teaches a testing system according to claim 11, further comprising analyzing said response data (**i.e., analysis as part of the testing basis to determine results** )(e.g., see at least abstract page 8 line 15 – page 9 line 10).

Consider **claim 13**, Rimpela teaches a testing system according to claim 12, wherein over the air radio messages are monitored by radio message monitoring means(e.g., **testing apparatus as noted in figure 2**), and further provided to said test control means for analysis together with said stack response data (**e.g., see at least page 14 line 10- page 15 line 15 and figures 2 and 3**).

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims **5 and 10** are rejected under 35 U.S.C. 103(a) as being unpatentable over Rimpela WO 00/51380 in view of Admitted Prior Art (APA)

Consider **claims 5 and 10 and as applied to the testing system according to claim 1**, Rimpela teaches the claimed invention except further comprising storage means for receiving and storing test data from said test control means and perturbation means in a central data file.

However, Applicants APA in at least **paragraphs 0008 and 0026** admits that it's known in the art to provide storage means for receiving and storing test data from said test control means and perturbation means in a central data file (**i.e., log, decode and analyze**).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Rimpela to include storage means for receiving and storing test data from said test control means and perturbation means in a central data file for the purpose of data analysis.

7. Claims **7-9 and 14** are rejected under 35 U.S.C. 103(a) as being unpatentable over Rimpela WO 00/51380 in view of Well Known Art.

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Consider **claim 7** and as applied to testing system according to claim 1, Rimpela teaches the claimed invention except wherein said test and control means comprises a distributed system of client computers under the control of a server computer, each client being linked to at least one radio device and respective perturbing means, the radio devices linked to said clients thereby forming a radio network and wherein said server computer synchronizes and controls perturbation, testing and monitoring of said radio network.

However, the Examiner takes official Notice that client/server architectures are notoriously well known in the art.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Rimpela to include wherein said test and control means comprises a distributed system of client computers under the control of a server computer, each client being linked to at least one radio device and respective perturbing means, the radio devices linked to said clients thereby forming a radio network and wherein said server computer synchronizes and controls perturbation, testing and monitoring of said radio network for the purpose of managing a distributed computing platform as is well known in the art.

Consider **claim 8** and as applied to testing system according to claim 6, Rimpela teaches the claimed invention except further comprising an interruptible power supply for supplying power to the radio devices under test.

However, the Examiner takes official Notice that interruptible power supply for supplying power are notoriously well known in the art.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Rimpela to include interruptible power supply for supplying

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power for the purpose of backup as is well known in the art. A person of ordinary skill in the art would be further motivated not to interrupt testing due to a loss of power which could possibly result in damage to the DUT(i.e., device under test).

Consider **claims 9 and 14** and as applied to testing system according to claims 8 and 12, Rimpela teaches the claimed invention except wherein said power supply is interruptible under control of said radio monitoring means and said server computer.

However, the Examiner takes official Notice that wherein said power supply is interruptible under control of said radio monitoring means and said server computer are notoriously well known in the art.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Rimpela to include wherein said power supply is interruptible under control of said radio monitoring means and said server computer for the purpose of backup and managing a distributed computing platform as is well known in the art. A person of ordinary skill in the art would be further motivated not to interrupt testing due to a loss of power which could possibly result in damage to the DUT(i.e., device under test).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHARLES SHEDRICK whose telephone number is (571)272-8621. The examiner can normally be reached on Monday thru Friday 8:00AM-4:30PM.



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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, V. Paul Harper can be reached on (571)-272-7605. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Charles Shedrick/  
Examiner, Art Unit 2617  
September 22 2008

/Lester Kincaid/  
Supervisory Patent Examiner, Art Unit 2617